

within generalized parameters. Sections 242.111, 242.115 and 242.403 require a railroad to have procedures for evaluating data concerning prior safety conduct as a motor vehicle operator and as railroad workers, yet leave selection of many details to the railroad. Sections 242.109, 242.201, and 242.401 place a duty on the railroad to make a series of determinations but allow the railroad to select what procedures it will employ to assure that all of the necessary determinations have been made in a timely fashion; who will be authorized to conclude that person will or will be not certified; and how it will communicate adverse decisions. Documentation of the factual basis the railroad relied on in making determinations under §§242.109, 242.117, 242.119 and 242.121 is required, but these sections permit the railroad to select the procedures it will employ to accomplish compliance with these provisions. Sections 242.125 and 242.127 permit reliance on certification/qualification determinations made by other entities and permit a railroad latitude in selecting the procedures it will employ to assure compliance with these provisions. Similarly, §242.301 permits the use of railroad selected procedures to meet the requirements for certification of conductors performing service in joint operations territory. Sections 242.211 and 242.407 allow a railroad a certain degree of discretion in complying with the requirements for replacing lost certificates or the conduct of certification revocation proceedings.

This section of the request should outline in summary fashion the manner in which the railroad will implement its program so as to comply with the specific aspects of each of the rule's provisions described in the preceding paragraph.

FRA REVIEW

The submissions made in conformity with this appendix will be deemed approved within 30 days after the required filing date or the actual filing date whichever is later. No formal approval document will be issued by FRA. FRA has taken the responsibility for notifying a railroad when it detects problems with the railroad's program. FRA retains the right to disapprove a program that has obtained approval due to the passage of time as provided for in section §242.103.

Rather than establish rigid requirements for each element of the program, FRA has given railroads discretion to select the design of their individual programs within a specified context for each element. The rule, however, provides a good guide to the considerations that should be addressed in designing a program that will meet the performance standards of this rule.

In reviewing program submissions, FRA will focus on the degree to which a particular program deviates from the norms identified in its rule. To the degree that a

particular program submission materially deviates from the norms set out in its rule, FRA's review and approval process will be focused on determining the validity of the reasoning relied on by a railroad for selecting its alternative approach and the degree to which the alternative approach is likely to be effective in producing conductors who have the knowledge and ability to safely perform as conductors.

[76 FR 69841, Nov. 9, 2011, as amended at 77 FR 6491, Feb. 8, 2012]

APPENDIX C TO PART 242—PROCEDURES FOR OBTAINING AND EVALUATING MOTOR VEHICLE DRIVING RECORD DATA

The purpose of this appendix is to outline the procedures available to individuals and railroads for complying with the requirements of §§242.109 and 242.111 of this part. Those provisions require that railroads consider the motor vehicle driving record of each person prior to issuing him or her certification or recertification as a conductor.

To fulfill that obligation, a railroad must review a certification candidate's recent motor vehicle driving record. Generally, that will be a single record on file with the state agency that issued the candidate's current license. However, it can include multiple records if the candidate has been issued a motor vehicle driving license by more than one state agency or foreign country.

ACCESS TO STATE MOTOR VEHICLE DRIVING RECORD DATA

The right of railroad workers, their employers, or prospective employers to have access to a state motor vehicle licensing agency's data concerning an individual's driving record is controlled by state law. Although many states have mechanisms through which employers and prospective employers such as railroads can obtain such data, there are some states in which privacy concerns make such access very difficult or impossible. Since individuals generally are entitled to obtain access to driving record data that will be relied on by a state motor vehicle licensing agency when that agency is taking action concerning their driving privileges, FRA places responsibility on individuals, who want to serve as conductors to request that their current state drivers licensing agency or agencies furnish such data directly to the railroad considering certifying them as a conductor. Depending on the procedures adopted by a particular state agency, this will involve the candidate's either sending the state agency a brief letter requesting such action or executing a state agency form that accomplishes the same effect. It will normally involve payment of a nominal fee established by the state agency

for such a records check. In rare instances, when a certification candidate has been issued multiple licenses, it may require more than a single request.

Once the railroad has obtained the motor vehicle driving record(s), the railroad must afford the prospective conductor an opportunity to review that record and respond in writing to its contents in accordance with the provisions of §242.401. The review opportunity must occur before the railroad evaluates that record. The railroad's required evaluation and subsequent decision making must be done in compliance with the provisions of this part.

APPENDIX D TO PART 242—MEDICAL STANDARDS GUIDELINES

(1) The purpose of this appendix is to provide greater guidance on the procedures that should be employed in administering the vision and hearing requirements of §242.117.

(2) In determining whether a person has the visual acuity that meets or exceeds the requirements of this part, the following testing protocols are deemed acceptable testing methods for determining whether a person has the ability to recognize and distinguish among the colors used as signals in the railroad industry. The acceptable test methods are shown in the left hand column and the criteria that should be employed to determine whether a person has failed the particular testing protocol are shown in the right hand column.

Accepted tests	Failure criteria
Pseudoisochromatic Plate Tests	
American Optical Company 1965	5 or more errors on plates 1–15.
AOC—Hardy-Rand-Ritter plates—second edition	Any error on plates 1–6 (plates 1–4 are for demonstration—test plate 1 is actually plate 5 in book).
Dvorine—Second edition	3 or more errors on plates 1–15.
Ishihara (14 plate)	2 or more errors on plates 1–11.
Ishihara (16 plate)	2 or more errors on plates 1–8.
Ishihara (24 plate)	3 or more errors on plates 1–15.
Ishihara (38 plate)	4 or more errors on plates 1–21.
Richmond Plates 1983	5 or more errors on plates 1–15.
Multifunction Vision Tester	
Keystone Orthoscope	Any error.
OPTEC 2000	Any error.
Titmus Vision Tester	Any error.
Titmus II Vision Tester	Any error.

(3) In administering any of these protocols, the person conducting the examination should be aware that railroad signals do not always occur in the same sequence and that “yellow signals” do not always appear to be the same. It is not acceptable to use “yarn” or other materials to conduct a simple test to determine whether the certification candidate has the requisite vision. No person shall be allowed to wear chromatic lenses during an initial test of the person's color vision; the initial test is one conducted in accordance with one of the accepted tests in the chart and §242.117(h)(3).

(4) An examinee who fails to meet the criteria in the chart, may be further evaluated as determined by the railroad's medical examiner. Ophthalmologic referral, field testing, or other practical color testing may be utilized depending on the experience of the examinee. The railroad's medical examiner will review all pertinent information and, under some circumstances, may restrict an examinee who does not meet the criteria for serving as a conductor at night, during ad-

verse weather conditions or under other circumstances. The intent of §242.117(j) is not to provide an examinee with the right to make an infinite number of requests for further evaluation, but to provide an examinee with at least one opportunity to prove that a hearing or vision test failure does not mean the examinee cannot safely perform as a conductor. Appropriate further medical evaluation could include providing another approved scientific screening test or a field test. All railroads should retain the discretion to limit the number of retests that an examinee can request but any cap placed on the number of retests should not limit retesting when changed circumstances would make such retesting appropriate. Changed circumstances would most likely occur if the examinee's medical condition has improved in some way or if technology has advanced to the extent that it arguably could compensate for a hearing or vision deficiency.

(5) Conductors who wear contact lenses should have good tolerance to the lenses and